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Erin E. Douglas

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THE STRUGGLE FOR HUMAN RIGHTS VERSUS STABILITY: THE CHINESE COMMUNIST PARTY AND WESTERN VALUES CLASH

*ERIN E. DOUGLAS**

Economic growth and human progress make their greatest strides when people are secure and free to think, speak, worship, choose their own way and reach for the stars.

President Ronald Reagan¹

I. INTRODUCTION

The issue of human rights lies at the center of past and present political struggles throughout the world.² The prevailing international norms as established through international law set the standard of what the world community constitutes as human rights. However, a nation-state, as a sovereign unit, creates its definition of human rights through cultural relativism, domestic laws and ultimately through the relationship between the individuals within the nation-state and the nation-state itself.³

With the rise of the Chinese Communist Party (CCP), the relationship of the individual and the state in China has been one of hostility and betrayal between both the Chinese government and its constituents.⁴ The CCP has been, and is fearful of, dissent within. The Chinese people fear to question their government because of this hatred of dissent. Adding to the hostility and betrayal is a western world torn

* J.D. candidate, May 2002, University of Denver, College of Law; B.A. May 1999, University of New Hampshire.

1. JOHN FRANKLIN COPPER, HUMAN RIGHTS IN POST-MAO CHINA 1 (1985), for words spoke by then President Reagan during a visit in April 1984 to Peking.

2. See RICHARD B. LILICH & FRANK C. NEWMAN, INTERNATIONAL HUMAN RIGHTS PROBLEMS OF LAW AND POLICY 12-13 (1979)

3. ANN KENT, BETWEEN FREEDOM AND SUBSISTENCE CHINA AND HUMAN RIGHTS 5 (1993); See also Part I, C2 *infra* (Discussing Cultural Relativism as it distinctly applies to human rights in China and inn particular, the Asian values debate).

4. See generally KENT, *supra* note 3.

between the virtue of human rights for all and the vice of economic power and might.⁵

This hypocrisy and conflicting passion suggest that until the western world prioritizes whether to follow its virtue or vice, China's human rights violations will not cease, but in fact, prosper. This paper will not attempt to vilify either the virtue or vice, but will examine why, in the past and present, human rights and economics in China is a battle between the individual and state with western forces intervening.

Part I of this paper will create a working definition of human rights that includes an analysis of the universalist and cultural relativist perspective and the Chinese definition of human rights. Part II, will discuss what is of utmost concern to many in the international arena; the CCP's silencing of the opposition.⁶ Through a historical examination of various intellectual dissident movements, Part II will show that the pro-active and successful stance of the Chinese government in silencing the opposition and thus disregarding any notions of human rights is a direct result of the CCP's perception that the opposition poses a viable threat to stability.

Part III will address the problems of definition, priority, jurisdiction and enforcement of human rights in China in the context of both conventional and customary international law. Part IV will also address the impact international trade and China's economy has had on the western world's enforcement of human rights in China. Finally, Part V will provide certain recommendations to the international legal arena that will put China's predicament in an objective legal perspective according to international law norms.

II. PART I: A WORKING DEFINITION OF HUMAN RIGHTS

A. *Historical Overview of the Development of Human Rights*

Traditionally, the international legal system was a law of nations.⁷ It was interested only with the rights and duties of states, not of individuals.⁸ Therefore, the various domestic legal systems remained

5. See Alan St. Alexandroff, *Concluding China's Accession to the WTO: The U.S. Congress and Permanent Most Favored Nation Status for China*, 3 UCLA J. INT'L L. & FOR. AFF. 23, 24 (1998) (discussing the US's conflict of trade with China and China's human rights records).

6. See *Consequences of MFN Renewal for China*, Hearing before the Committee on Foreign Relations, United States Senate, 104th Cong. 1 (1996) for a statement by Senator Jesse Helms discussing the fears the U.S. has regarding the Chinese oppression of its citizens [hereinafter *Consequences of MFN Renewal for China*].

7. LOUIS HENKIN, *THE AGE OF RIGHTS* 14 (1990).

8. *Id.*

completely free to regulate the lives of their own citizens.⁹

The American Revolution and the French Revolution of the late eighteenth century, however, declared the first generation of human rights.¹⁰ They focused on individual, civil, and political rights that attempted to guarantee both private liberty and democratic participation.¹¹ Both the American Declaration of Independence (1776)¹² and the French Declaration of the Rights of Man and of the Citizen (1789)¹³ articulated natural or human rights.¹⁴

The second generation arose with the Industrial Revolution of the nineteenth century.¹⁵ The focus of the Industrial Revolution shifted to social rights.¹⁶ The Industrial Revolution created poverty and increased the size of the working class. These changes demanded economic and social rights to help overcome the adversities associated with the change.¹⁷

The universalization of human rights developed during the twentieth century.¹⁸ Post World War I Wilsonian idealism opined the notion of people's rights and universalization with the creation of the League of Nations.¹⁹ Article 22 of the League of Nations articulated that peoples whose government failed as a consequence of war, would be put under the protectorate of advanced nations as mandatories of the League.²⁰ These mandatories were to guarantee freedom of conscience and religion and prohibition of such abuses as slave trade.²¹ Article 23 created an elaborate system for the protection of minorities.²² The demise of the League of Nations did not lead, however, to the demise of idealism.²³

9. LILLICH, *supra* note 2, at 54.

10. Winfried Brugger, *The Image of the Person in the Human Rights Concept*, 18 HUM. RTS. Q. 594, 597 (1996).

11. *Id.*

12. THE DECLARATION OF INDEPENDENCE (U.S. 1776), available at <http://www.law.ou.edu/hist/decind.html> (last visited Mar. 8, 2001).

13. FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN (1789); See also MICHAEL C. DAVIS, HUMAN RIGHTS AND CHINESE VALUES LEGAL, PHILOSOPHICAL AND POLITICAL PERSPECTIVES 27, 30-34 (1995) (discussing further the French Declaration)[hereinafter HUMAN RIGHTS AND CHINESE VALUES].

14. See also LOUIS L. HENKIN, *supra* note 7, at 162-63 (contrasting the two documents).

15. Brugger, *supra* note 10, at 597.

16. *Id.*

17. *Id.*

18. *Id.* at 597-98.

19. See generally LILLICH, *supra* note 2.

20. See *id.* at 2.

21. *Id.*

22. *Id.* at 3.

23. David Golove, *From Versailles to San Francisco: The Revolutionary Transformation of the War Powers*, 70 U. COLO. L. REV. 1491, 1495 (1999).

Post-World War II, the establishment of the United Nations carried on the idealism.²⁴ The world, left with the consequences and aftermath of the atrocities of war, needed some sort of order for the future.²⁵ Through this desire, the United Nations set forth its Universal Declaration of Human Rights [hereinafter The Declaration].²⁶

B. Human Rights as Defined by Western Values

1. Human Rights as Defined by International Treaties and Covenants

The Universal Declaration of Human Rights has been described as "a transitional instrument somewhere between a legal and moral ordering."²⁷ The Declaration contains thirty articles that proclaim standards of achievements for all people and all nations regarding human rights.²⁸ This declaration established the foundation for a universal human rights regime. Since, the promulgation of the Declaration, the UN has drafted many international covenants that aim to protect civil, political, cultural and economic rights. Amongst these are: the International Covenant on Civil and Political Rights²⁹; the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)³⁰; the Convention on the Elimination of Racial Discrimination³¹; Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)³² and Convention on the Rights of the Child.³³

2. Western Definition of Human Rights

Many reason this desire to promote and protect human rights on a universal standard as a Western value.³⁴ From a Western viewpoint,

24. See generally *supra* note 23.

25. LILLICH, *supra* note 2, at 5.

26. *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc A/810 (1948)[hereinafter *Universal Declaration of Human Rights*].

27. KENT, *supra* note 3, at 7.

28. *Universal Declaration of Human Rights*, *supra* note 26.

29. *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171[hereinafter ICCPR].

30. *Convention on the Elimination of all Forms of Discrimination Against Women*, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

31. *Convention on the Elimination of Racial Discrimination*, Mar. 7, 1966, 660 U.N.T.S. 195.

32. *Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*, opened for signature Dec. 10, 1984, S. Treaty Doc. No 100-20 (1988), 1465 U.N.T.S. 113 [hereinafter CAT].

33. *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 U.N.T.S. 3.

34. WILLIAM THEODORE DE BARY, *ASIAN VALUES AND HUMAN RIGHTS: A CONFUCIAN*

basic human rights have three correlative duties: to avoid depriving (negative rights); to protect from deprivation; and to aid the deprived (positive rights).³⁵ With these three duties, human rights raise questions about the essential values of society.³⁶ That is, the Western World places emphasis on the individual whereby the societies of the East value the community.³⁷ Human rights also raise questions about the relationship between the individual and the state. Based on a particular government's definition of human rights, the treatment of citizens within will differ.³⁸ In addition, human rights raise questions between international and domestic law.³⁹ Discrepancies arise between state constitutions and international covenants.⁴⁰ Moreover, discrepancies arise between the actual practice and behavior of states and the practice and behavior as defined through international covenants⁴¹.

Western values state that human rights apply to individuals across the board.⁴² They are not earned or based upon merit. Human rights, consequently, are limitations on what a government might do to the individual and what society is obligated to do for the individual. They are the rights to be free from, but the rights to be free to, as well as the right to be. The ability to be free, to have one's own thoughts, is the most fundamental of all human rights.⁴³ The freedom of thought, the freedom of being free constitutes being human, being what and who one is. It is, "being this particular person as opposed to someone else."⁴⁴ This freedom is not possible in Communist China.

Further, from a Western viewpoint, author Stanley Cohen argues that human rights information is communicated and targeted for three audiences: (1) the official circuit of perpetration and observer governments; (2) the mass media; and (3) direct appeals to the moral public.⁴⁵ When this information disseminates to the public, the

COMMUNITARIAN PERSPECTIVE 8 (1998)[hereinafter ASIAN VALUES AND HUMAN RIGHTS].

35. See KENT, *supra* note 3, at 6-7 (discussing the three correlative duties in depth).

36. See Michael C. Davis, *Human Rights in Asia: China and the Bangkok Declaration*, 2 BUFF. J. INT'L L. 215, 217 (1995)[hereinafter *Human Rights in Asia*].

37. This concept is discussed in greater detail *infra* in Part I, subsection C-2.

38. See *Human Rights in Asia*, *supra* note 36, at 220 (discussing that despite constitutional mandates, the CCP permits little individual resistance or criticism).

39. KENT, *supra* note 3, at 5.

40. See *Human Rights in Asia*, *supra* note 36, at 220 (discussing Article 51 of the Chinese Constitution).

41. *Id.* at 222-23 (illustrating that despite declaring adherence to international human rights covenants, China continues to crack down hard on dissidents).

42. HENKIN, *supra* note 7, at 2.

43. CONFUCIANISM AND HUMAN RIGHTS 234 (William Theodore de Bary & Tu Weiming eds., 1998)[hereinafter CONFUCIANISM AND HUMAN RIGHTS].

44. *Id.*

45. Stanley Cohen, *Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims*, 18 HUM. RTS. Q. 517, 518 (1996).

perpetrators that violate human rights standards deny responsibility as part righteousness justification.⁴⁶ Part of this justification rationalizes that there are no universal human rights values and, hence, any society can act according to its own morality.⁴⁷ The other claim is that there are alternative sets of values that, under certain circumstances, take precedence over any universals.⁴⁸ Confucianism is one of these alternative sets of values that, historically, China has used to justify its human rights practice.

C. Historical Overview of Human Rights in China

What are human rights? They are the rights of how many people, of a majority, a minority, or of all the people? What the West calls human rights and what we call human rights are two different things, with different standards and points.

Deng Xiaoping⁴⁹

1. Confucian Impact

Society in China bases its thoughts and ideas upon Confucianism. Confucianism, a major system of thought in China, developed from the teachings of Confucius and his followers.⁵⁰ Confucianism influences the attitudes, pattern of living, standards of social value of the Chinese.⁵¹ Confucianism has served as the backbone of Chinese political theory including that of human rights.⁵²

Confucianism details four analects that deal with human rights: the paths of benevolence (*ren dao*); tolerance (*shu dao*); justice (*yi dao*); and government (*zheng dao*).⁵³ These Confucian thoughts articulate ideas about human dignity.⁵⁴

For instance, benevolence in Confucian theory is the maintenance of personal dignity and a love of mankind.⁵⁵ Benevolence depends upon the actions of individuals, not the collective whole.⁵⁶ Tolerance is the

46. Cohen, *supra* note 45, at 530.

47. *Id.*

48. *See id.*

49. KENT, *supra* note 3, at 51.

50. Microsoft Encarta: Confucianism, <http://www.connect.net/ron/confucianism.html> (last visited Mar. 18, 2001).

51. *Id.*

52. *See generally* CONFUCIANISM AND HUMAN RIGHTS, *supra* note 43, at 27-29.

53. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 35.

54. *Id.* at 37.

55. *Id.*

56. *Id.* at 38.

analect that includes the right of freedom of speech and academics.⁵⁷ Confucius mainly advocated in this freedom of speech the right to criticize government and to be a dissident.⁵⁸ Justice is the code of political behavior in compliance with Confucian norms.⁵⁹ It contains the notion of ethics⁶⁰ and resistance.⁶¹ The protection and achievement of benevolence, tolerance and justice depends upon the object of the fourth analect, the government.⁶²

Confucian tradition, however, stresses moral virtue to the state and to its officials and lessens the worth of the individual.⁶³ Communitarian in outlook, Confucian moral and political thought advances:

The fact that the human person is essentially a social being; giving primacy of place to the duties that persons have to the common good of the community and the virtues needed for the fulfillment of these duties and casting reciprocal social relationships and roles...as fundamental to communal flourishing and its shared vision of the good.⁶⁴

Confucianism expects the individual to defer to the interests of the collective, represented by the family, kinship or government.⁶⁵ Historically, the fact the individual was bound to the "collectivity"⁶⁶; the family, clan or village, abridged the state's task of maintaining order.⁶⁷ Everyone, as a collective entity, was responsible for the actions of one.⁶⁸ Therefore, Chinese culture is group-oriented and essentially hostile to the individual. When the CCP came to power, it played upon the Confucian notion of selflessness.⁶⁹

a. Chinese Intellectuals and Their Definition of Human Rights.

Despite the "collectivity" argument stemming from Confucian philosophy, intellectual movements in China have looked towards Confucian guidance in entertaining their definition of human rights. As mentioned above, the Confucian analect of tolerance advocated

57. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 41.

58. *Id.* at 42.

59. *Id.* at 45.

60. *Id.*

61. *Id.* at 49.

62. *See generally id.*

63. THE INDIVIDUAL AND THE STATE IN CHINA 16 (Brian Hook, ed., 1996).

64. CONFUCIANISM AND HUMAN RIGHTS, *supra* note 43 at 40-41.

65. ASIAN VALUES AND HUMAN RIGHTS, *supra* note 34 at 34.

66. The author refers to the "collectivity" throughout this paper. The CCP uses the notion the "collectivity", based upon Confucian norms, to argue for group over individual rights. The "collectivity" stands for Chinese society as a whole.

67. THE INDIVIDUAL AND THE STATE IN CHINA, *supra* note 63 at 27.

68. *Id.*

69. *See generally* KENT, *supra* note 3, at 44-50 (discussing the CCP's rise to power).

criticizing the government.⁷⁰ All four analects, historically rooted in Chinese culture and tradition, help legitimize the intellectuals' call for human rights based upon the individual.

2. China's Definition of Human Rights

China argues that a nation's cultural and historical situation, its *guoqing*, determines human rights.⁷¹ This is a central element of China's claim for special treatment.⁷² The CCP believes that the West imposed values enshrined in international human rights declarations in classic imperialist and colonialist fashion on other cultures.⁷³

The CCP believes that the "universal" values are not universal.⁷⁴ Values are, in the CCP's view, highly ethnocentric and alien to local cultures and thus have no relevance to the internal affairs in China.⁷⁵

Therefore, China argues those human rights conditions in democratic and communist nations will differ.⁷⁶ The CCP believes that their political system and economic policy do not lend themselves to a "Western" definition of the protection of human rights.⁷⁷ For instance, in responding to critics from the West, a Chinese newspaper, *Renmin Ribao* (the People's Daily) reported that:

Our (China's) public ownership of the means of production and our system of reward according to work, our system of the National People's Congress, our socialist democracy and our socialist legal system have given rise to a new form of safeguard for human rights in their economic, political and legal aspects.⁷⁸

a. Cultural Relativism: The Bangkok Declaration

China has denounced the universalist perspective on human rights and instead argues for cultural relativism.⁷⁹ Cultural relativism states that universal standards of human rights do not override unique Asian

70. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 42.

71. *From Principle to Pragmatism: Can "Dialogue" Improve China's Human Rights Situation?* HUMAN RIGHTS IN CHINA, 10 (1998)[hereinafter *From Principles to Pragmatism*].

72. *Id.*

73. See Cohen, *supra* note 45, at 534. Cohen offers justifications for the rejection of the universalist standard.

74. See *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, U.N. DOC A/CONF.157/PC/59 (1993)[hereinafter *Bangkok Declaration*].

75. See Cohen *supra* note 45, at 530 for an account of government's denials to the universal values.

76. See *Bangkok Declaration*, *supra* note 74, for China's position on human rights.

77. See *Bangkok Declaration*, *supra* note 74.

78. COPPER, *supra* note 1, at 5.

79. See *Bangkok Declaration*, *supra* note 74.

regional and cultural values and the requirements of economic development and the privileges of sovereignty.⁸⁰ The Bangkok Declaration of 1993 tested in the international arena this particularly Asian view of emphasizing stability and power over human rights and demands for political reforms.⁸¹

The Bangkok Declaration summed up China's stance on human rights.⁸² Asian nations issued the Bangkok Declaration in the Asian preparatory meeting to the United Nations Convention on Human Rights in Vienna in 1993.⁸³ The Convention rejected the Bangkok Declaration at the conference.⁸⁴ The Bangkok Declaration was a symbol of China's, and other Asian states', resistance to the imposition of Western human rights values in Asia.

The Bangkok Declaration, unlike the Universal Declaration of Human Rights, put on paper, what, in fact, China was practicing. The Declaration argued for the consideration of Asian historical, cultural and economic factors (in essence cultural relativism) when determining human rights standards.⁸⁵

It states that the Asian region recognizes, "that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."⁸⁶ This included national sovereignty over what constitutes human rights and human rights abuses.⁸⁷ It did not include a universal definition as advocated by the UN.⁸⁸

Despite the rejection by the 1993 United Nations Convention on Human Rights, China's White Paper on Human Rights still ascribes to the spirit of the Bangkok Declaration.⁸⁹ The White Paper states that a country must have sovereignty to rule itself without outside interference and be able to meet the subsistence needs of its people

80. See generally Daniel Bell, *The East Asian Challenge to Human Rights: Reflection on an East West Dialogue*, 18 HUM. RTS. Q. 641 (1996).

81. *Bangkok Declaration*, *supra* note 74. See also *Human Rights in Asia*, *supra* note 36, at 216.

82. *Bangkok Declaration*, *supra*, note 74.

83. *Id.*

84. *Id.*

85. *Human Rights in Asia*, *supra* note 36, at 216.

86. *Bangkok Declaration*, *supra* note 74, at art. 8.

87. *Id.*; See also HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 17 (quoting Head of the Chinese delegation Liu Huaquiu that state sovereignty is the basis of the realization of citizens' human rights).

88. *Bangkok Declaration*, *supra* note 74, at art. 8.

89. See Guo Luoji, *A Human Rights Critique of the Chinese Legal System*, 9 HARV. HUM. RTS. J. 1, 4 (1996).

before it can aspire to other human rights achievements.⁹⁰

In the CCP's view, human rights should promote economic development and collective rights over individual rights.⁹¹ The CCP equates this economic development in China with stability and order.⁹² The CCP derives stability and order, collectively, from a uniform consensus amongst its people. What the intellectual movements in China have constituted as human rights is in direct conflict with these views.⁹³

III. PART II: THE CCP SILENCES OPPOSITION

A. Overview of Human Rights Violations of Intellectuals in China

Asian societies, based upon their Confucian tradition, grant intellectuals an exceeding amount of legitimacy.⁹⁴ This is due to their belonging to a distinct institution of political critique in Chinese history.⁹⁵ The intellectuals, in their efforts to reform, have represented, and suffered, for the masses of China.⁹⁶

At the beginning of the CCP's rise to power, the intellectuals believed it was their duty to participate in the government as officials or advisors to high officials.⁹⁷ In the intellectuals' opinions, they were the moral conscience of society.⁹⁸ They felt it was their responsibility to speak out against the abuse of official power and unfair treatment of the population.⁹⁹

The intellectuals were, in their ambitious view, intermediaries between the rulers and the ruled.¹⁰⁰ They attempted this bridge by being neither part of the working class nor revolutionaries.¹⁰¹ The intellectuals were to merge with the new socialist order.¹⁰²

Intellectuals have attempted to find ways of incorporating into

90. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 35.

91. *See generally*, THE INDIVIDUAL AND THE STATE IN CHINA, *supra* note 63, at 204-05 (discussing the social changes brought about by economic reform).

92. *Id.*

93. Intellectuals, conversely, feel that improved human rights will ultimately give way to economic development. Therefore, the CCP should focus first on human rights and then development.

94. Bell, *supra* note 80, at 644.

95. KENT, *supra* note 3, at 137.

96. *See id.* (discussing, for example, how intellectuals in imperial China were punished, families injured, or killed for unsubstantiated charges against the government).

97. CONFUCIANISM AND HUMAN RIGHTS, *supra*, note 13 at 262.

98. *Id.*

99. *Id.*

100. CONFUCIANISM AND HUMAN RIGHTS, *supra*, note 13 at 262.

101. THE INDIVIDUAL AND THE STATE IN CHINA, *supra* note 63, at 151.

102. *Id.*

their own view of China the things that they value in the West.¹⁰³ The intellectuals also look to Chinese tradition for answers to the problems that they saw arising from the West's development.¹⁰⁴ The intellectuals looked like the missing link to the modernity that was missing in revolutionary China. However, the CCP would not let this be so.¹⁰⁵ The CCP maintained the intellectuals so that their status was to work for the state and to increase its power rather than allow them to bring socialist energies and change.¹⁰⁶

The intellectuals could build a bridge to development and at the same time, their ideas were threatening to the communist regime and the essence of communism itself.¹⁰⁷ The CCP was weary of this potential link because modernity was associated with western bourgeois thinking.¹⁰⁸ The CCP recognized the potential power possessed by the intellectuals.¹⁰⁹ Yet, the CCP was in firm control of the state power and an ideological hegemony was in place.¹¹⁰ The CCP singled out intellectuals as a threat to the CCP's stability.¹¹¹

1. The 1954 Constitution

The CCP created the 1954 Constitution in an attempt to facilitate economic reconstruction, and regularize and institutionalize the political and legal structures in China.¹¹² While the Constitution provided for many rights, the CCP created laws that, in effect, circumvented the rights of the constitution if state interests or policies were involved.¹¹³ With the 1954 Constitution, the freedom of thought essentially disappeared.¹¹⁴ Article 51 of the Constitution stated, "the exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and or the collective, or upon the lawful freedoms and rights of other citizens."¹¹⁵ The CCP, through Article 51, established its views of dissent within the party. Article 51 thus limited the flexibility of intellectual's

103. CONFUCIANISM AND HUMAN RIGHTS, *supra* note 13, at 272.

104. *See id.* at 261 (discussing the intellectuals' emphasis on Confucian values).

105. THE INDIVIDUAL AND THE STATE IN CHINA, *supra* note 63, at 152.

106. *Id.*

107. *Id.*

108. *See* KENT, *supra* note 3, at 149-50 (discussing the intellectuals attempts to incorporate Western thinking and the CCP's response).

109. THE INDIVIDUAL AND THE STATE IN CHINA, *supra*, note 63 at 152.

110. *See id.* at 151 (discussing the control of ideas and thoughts by the CCP, in particular the control of intellectuals' viewpoints).

111. *See id.* (discussing, in particular, Mao Zedong's singling out of intellectuals).

112. KENT, *supra* note 3, at 54.

113. *Id.* at 55.

114. *Id.* at 54.

115. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 108.

within society.¹¹⁶

2. Mao Zedong Cements His Power over China

It was during this time that Mao Zedong cemented his power over China.¹¹⁷ China, he believed, should embrace the ideas of class rights and not human rights.¹¹⁸ This encompassed the notion of rights held collectively, not on the individual basis.¹¹⁹ Thus, under Mao's control intellectuals were to uphold to the idea of the "collectivity". Mao attempted to test their loyalty during his Hundred Flowers Campaign.¹²⁰

a. The Hundred Flowers Campaign

The pattern of the Hundred Flowers Campaign is a classic example of the measures that explain the state and intellectual relationship in China. The intellectuals posed a threat to the order of the CCP and the government took a pro-active response to end this threat. The Hundred Flowers Campaign was Mao's first major stand against the intellectuals.¹²¹

In response to an anti-Communist revolt in Hungary in 1956, the Chinese government openly called for Chinese intellectuals to criticize his government.¹²² In a speech titled "On the Correct Handling of Contradictions among the People" delivered on February 27, 1957, Mao stated the best way to handle inconsistencies was by "letting a hundred flowers bloom, a hundred schools contend."¹²³ Much to the dismay and surprise of CCP officials, intellectuals came out in full force to express their biting disapproval of the prevailing regime.¹²⁴

Mao launched a massive anti-rightist campaign.¹²⁵ The CCP imprisoned these so-called counter-revolutionaries or sent them to

116. According to the parameters of Article 51, if any freedoms or rights interfered with the goals of the state, than those rights may not be exercised. This applied to the intellectuals right to thought.

117. See TANG TSOU, *THE CULTURAL REVOLUTION AND POST-MAO REFORMS*, 69 (1986) (discussing Mao's coercive persuasion of manipulating man's motive for obeying political power).

118. See KENT, *supra* note 3, at 54.

119. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 87.

120. See *id.* (discussing the Hundred Flowers Campaign as actually a trap set by Mao).

121. See KENT, *supra* note 3, at 138

122. See THE CONTINUING CHALLENGE OF THE HUNGARIAN SITUATION TO THE RULE OF LAW (Int'l Commission of Jurists, 1957) for a report from The Hague following the anti-communist, anti-Soviet rebellion of 1957 in Hungary.

123. KENT, *supra* note 3, at 138.

124. *Id.* at 64.

125. HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 14.

forced labor camps.¹²⁶ If sent to “reform” camps, the CCP forced intellectuals to work seven days a week for up to twenty hours a day hauling coal or collecting manure.¹²⁷ Thousands died of mistreatment and malnourishment.¹²⁸

b. The Cultural Revolution

The same pattern of dissent by intellectuals, threat to the CCP’s stability and elimination of the threat apply to the counter-revolutionary movements in China after the Hundred Flowers Campaign. On May 16, 1966, nine years after the last major anti-rightist campaign, the CCP formally launched the Cultural Revolution.¹²⁹

The Cultural Revolution was to undermine the entrenched, bureaucratic structures of the CCP and to reinvigorate the ideals of mass participation.¹³⁰ Mao dismantled the judiciary and the CCP closely examined and criticized citizens’ backgrounds in public.¹³¹ Leading intellectuals were humiliated, tortured or even driven to suicide.¹³² Chinese authorities estimate that between 1966-1976, the CCP persecuted 729,511 people and among whom 34,800 died.¹³³

The Cultural Revolution was Mao’s greatest effort to eliminate all dissent within the CCP and China and attempt to strengthen his party as well.¹³⁴ The Cultural Revolution was a dismal part of Chinese history. It was a wholesale assault on tradition, family and person, undermining any semblance of spiritual values, honor, dignity and social status.¹³⁵

3. The Democracy Wall Movement

After the Cultural Revolution, the fall of Mao Zedong and the death of his successor Lin Baio on September 13, 1971, Zhou Enlai came to power.¹³⁶ Zhou’s vice-premier, Deng Xiaoping established in January

126. KENT, *supra* note 3, at 64.

127. *Id.* at 65.

128. *Id.*

129. TSOU, *supra* note 117, at 341.

130. KENT, *supra* note 3, at 138.

131. *Id.* at 65.

132. *Id.*

133. *Id.* at 66.

134. See generally The People’s Republic of China: The Cultural Revolution Decade, 1966-77 [hereinafter Cultural Revolution Decade] available at <http://www.chaos.umd.edu/history/pres.htm> (last visited Mar. 20, 2001).

135. See generally *id.* (discussing the various groups targeted under the Militant Phase of the Cultural Revolution).

136. TSOU, *supra* note 117, at 341.

1975 the Four Modernizations Program (agriculture, national defense, science and technology and industry), in an attempt to change the economic and technology sectors of China.¹³⁷ However, in the Democracy Wall Movement of 1978-79, intellectuals began to raise such themes as the need for civil and political rights to match the economic reform in China.

The Democracy Wall Movement attempted to establish a system of socialist democracy that would reflect Marxist principles and eliminate the unearned privileges of the political elite.¹³⁸ It called for the establishment of a legal system and the restructuring of government to institutionalize these principles.¹³⁹ The Democracy Wall Movement is important as it represents the moment when Chinese leaders could have moved towards genuine political reform within the existing socialist system, but did not.¹⁴⁰ Instead, the CCP feared the change these potential reforms might bring.¹⁴¹ Deng made it illegal to call for freedom of speech, press, assembly, and association in ways implying that counter-revolutionaries would enjoy them.¹⁴² These restrictions helped fuel the passion and resentment of the masses.¹⁴³

4. The International Arena Becomes Aware

The international arena, largely, was unaware of the egregious human rights abuses committed by the CCP. However, in the late 1970's, the revelations about the Cultural Revolution, the gradual opening up of Chinese society through trade and joint business ventures, and thousands of students' exits to foreign universities, served to uncover the situation and internationally professed ignorance.¹⁴⁴ For instance, in 1978, the Carter administration issued a first public statement on human rights made by a Western government.¹⁴⁵ The same year, Amnesty International issued the first of many reports on China, entitled, *Political Imprisonment in the People's Republic of China*.¹⁴⁶ Two years later, in 1980, Congress published the first Congressional Report on human rights abuse.¹⁴⁷

137. See Cultural Revolution Decade, *supra* note 134.

138. KENT, *supra* note 3, at 140.

139. See *id.* at 142.

140. *Id.* at 146.

141. *Id.*

142. *Id.*

143. *Id.* at 147.

144. *Id.* at 154.

145. *Id.*

146. *Id.*

147. *Id.*

5. The Tiananmen Incident

Students of revolution have long noted that trouble comes not from the depths of misery but from the appetite that grows with better eating.

David Landes¹⁴⁸

The 1989 Democracy Movement opened the eyes and minds of people worldwide to the cruelty occurring in China.¹⁴⁹ Student leaders called upon the CCP to: have elections to choose leaders; have an independent judiciary; an effective legal system; and supervision of the government through the press.¹⁵⁰ Students demonstrated in Tiananmen Square to protest against the CCP.¹⁵¹

The tragedy and the results of the so-called "CNN-effect" forever etched the events in history.¹⁵² The student protests at Tiananmen Square and the ensuing crackdown on dissidents called worldwide attention to the gravity of the human rights abuses in China.

B. The Present Situation in China

Over ten years have passed since Tiananmen Square. Abuses and violations of human rights in China still run rampant. These abuses include: arbitrary detention; political imprisonment; torture and ill treatment of detainees; deprivation of the rights to freedom of expression and association; widespread failure to enforce laws protecting the rights of workers and women; suppression of religious freedom; and the use of psychological coercion in the implementation of the population control policy.¹⁵³

Recent reports claim that jailed members of the outlawed China Democratic Party (CDP) face worsening prison conditions.¹⁵⁴ In addition, the forced labor systems known as *laogai* are still present. All of the recent constitutions of China even avow that the state maintains public order and suppresses treasonable and other counter-revolutionary activities.¹⁵⁵ These constitutions penalize actions that

148. KENT, *supra* note 3, at 167.

149. *Id.* at 186-87.

150. *Id.* at 178.

151. *Id.*

152. See "The CNN Effect" TV & Foreign Policy, available at <http://www.cdi.org/adm/834/index.html> (last visited Jan. 20, 2001) (discussing The CNN effect as the impact live broadcasting of international events has on foreign policy).

153. HUMAN RIGHTS IN CHINA, *supra* note 13, at 2.

154. *Health of Jailed Chinese Dissidents Deteriorating*, AGENCE FRANCE PRESSE, Dec. 5, 2000 [hereinafter *Health of Jailed Chinese Dissidents Deteriorating*].

155. See RAMIN PEJAN, REFORM THROUGH LABOR IN CHINA, reprinted at www.wcl.american.edu/pub/humright/brief/v7i2/laogai.htm

disrupt the socialist economy.¹⁵⁶

The resistance within the Hundred Flowers Movement, Democracy Wall Movement and the Tiananmen Square incident of 1989 were, through their creation of disorder and dissent, threats to China's order. If the Chinese government thought these to be harmless, they would not have suppressed them. At the same time, the battle between the CCP and the intellectuals in regards to human rights is not over.¹⁵⁷ One can argue, however, that the CCP is winning.

The priorities of the CCP dictate the agenda of China. Intellectuals and the rest of the world cannot convince the CCP that an idealized platform of human rights will lead to economic development. Instead, through the CCP's resistance to change, China has attempted to preserve stability, thus ignoring human rights pleas.¹⁵⁸

According to Harvard economist and philosopher Amartya Sen, to further dispute this position of the CCP, systematic cross-national statistical studies do not confirm that there is a correlation between authoritarianism and economic success.¹⁵⁹ Instead, affording population civil and political rights may provide economic security through appropriate government responses to societal problems.¹⁶⁰

As scholar Samuel P. Huntington so aptly argues, "economic development is a continuous unstable process, which is a new policy for the fulfillment of the people's demands. However, it usually further enlarges their wants."¹⁶¹ The social change brought about by economic reform have led to insecurity and discontent among the more disadvantaged and imperiled sections of China's population.¹⁶² These have fueled social unrest and instability, accompanied by a widely perceived decline in the standards of public order and morality.¹⁶³ With many in China dissatisfied, and their government's refusal to alleviate any tensions, the West has looked to lend intervention to the situation.¹⁶⁴ Non-governmental organizations, human rights watch groups, international organizations, multinational companies doing business in Asia, and major governments themselves are interested in this attempted intervention due to the Chinese approach to human rights.¹⁶⁵ This, in turn, has created jurisdiction and enforcement

156. COPPER, *supra* note 1, at 62.

157. See generally *Health of Jailed Chinese Dissidents Deteriorating*, *supra* note 154.

158. See KENT, *supra* note 3, at 194 and 235.

159. Bell, *supra* note 80, at 646.

160. *Id.*

161. HUMAN RIGHTS & CHINESE VALUES, *supra* note 13, at 136.

162. See *id.* at 131-32.

163. See KENT, *supra* note 3, at 193.

164. See HUMAN RIGHTS & CHINESE VALUES, *supra* note 13, at 116.

165. See generally <http://www.amnesty.org>; <http://www.HRICHina.org>; Lena Ayoub, *Nike Just Does It-And Why the United States Shouldn't: The United States' International*

problems in the realm of human rights.¹⁶⁶

IV. PART III: PROBLEMS OF DEFINITION, PRIORITY, JURISDICTION AND ENFORCEMENT RIGHTS IN CHINA

A. Jurisdiction Problems

1. Jurisdiction

In the humanist, Western tradition, law protects human rights.¹⁶⁷ When the CCP came to power, they abolished previous legal codes and institutions.¹⁶⁸ They originally introduced no civil and criminal legal order.¹⁶⁹ Instead, the CCP ruled in a manifestly arbitrary and fundamentally lawless way.¹⁷⁰ On the contrary, international law derives from the theory that an individual is, somewhat, a subject of international law with enforceable rights, which do not derive their validity from citizenship of a sovereign state.¹⁷¹

As Australian scholar Ann Kent argues, human rights are a lifebelt between the individual community and the individual, which, by implication, bypass the authority of the state.¹⁷² Further, she contends that to uphold the cultural relativism that China maintains is to say that every culture is equally valid and that no external values should contaminate it.¹⁷³ Thus, cultural relativism is an argument against the international jurisdiction of human rights.

Though not normally tested, courts should be able to obtain this international jurisdiction over human rights abuses through international covenants and treaties. The UN Charter does not specifically address or promote this international jurisdiction. In fact, Article 2(7) of the UN Charter forbids the interference in matters that are "essentially within the domestic jurisdiction of any state."¹⁷⁴ However, it is my contention that gross violations of human rights should rise from the area of domestic jurisdiction to the international arena. As L. Henkin has observed:

Obligation To Hold MNC Accountable For Their Labor, 11 DEPAUL BUS.L.J. 395 (1999); *Consequences of MFN Renewal for China*, *supra* note 6.

166. See KENT, *supra* note 3, at 19.

167. COPPER, *supra* note 1, at 2.

168. *Id.* at 41; See also KENT *supra* note 3, at 54 (discussing the 1954 Constitution which replaced the previous laws under non-Communist China).

169. KENT *supra* note 3, at 54.

170. COPPER, *supra* note 1, at 41.

171. LILLICH, *supra* note 2, at 55.

172. KENT, *supra* note 3, at 19.

173. *Id.* at 20.

174. U.N. CHARTER art. 2, para. 7.

Such violations surely are not a matter of domestic jurisdiction. Whether an alleged infringement is such a violation is a question of international law, not one for an accused state to determine finally. Furthermore, if human rights were always a matter of domestic jurisdiction and never a proper subject of external attention in any form, provisions of the UN charter, the Universal Declaration of Human Rights, the various international covenants and conventions and countless activities, resolutions, and actions of the UN and other international bodies would be *ultra vires*.¹⁷⁵

China argues that it is *ultra vires*¹⁷⁶, or outside the scope of law, for the international arena to prescribe subjective laws for China that are, essentially non-existent. However, by signing various conventions, covenants and treaties, China has consented, as a matter of law, to international jurisdiction.¹⁷⁷

2. Customary International Law

Customary international law is another basis for the international jurisdiction of human rights abuses. Customary international law crystallizes through three scenarios: 1) diplomatic relations between states; 2) practice of international organs; and 3) state laws, decisions of state courts, and state military or administrative practices.¹⁷⁸ The diplomatic relations between most Western states has recognized customary international jurisdiction over human rights abuses violations.¹⁷⁹ It is in the opinion of most of these countries that the universalization of human rights is customary international law, and states should abide by it.¹⁸⁰ China disagrees, and hence enforcement problems of this international jurisdiction arise.¹⁸¹

B. Enforcement Problems

No independent enforcement agency exists to aid the new transactional concern with the rights of the individual.¹⁸² Since no legal agency enforces rights, their actual enforcement is ultimately dependent on the political will of the state. China does not have the political will, or agenda, to promote this enforcement. Therefore, the

175. HENKINS, *supra* note 7, at 56.

176. See BLACK'S LAW Dictionary 1525 (7th ed. 1999) as it defines *ultra vires* as, "Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law."

177. Please refer to Part III Sub-Section B-2, *infra*, for a discussion of this

178. INTERNATIONAL LAW 135 (Barry Carter & Phillip Trimble eds., 3rd ed. 1999).

179. *Id.* at 848.

180. *Id.*

181. See *Bangkok Declaration*, *supra* note 74.

182. KENT, *supra* note 3, at 22.

question arises over how to enforce an international norm of human rights.

1. Military Intervention

International humanitarian interventions such as those that occurred in Bosnia, Kosovo, and Somalia circumvented Article 2(7) of the UN Charter.¹⁸³ In these extreme situations, nations attempted to enforce human rights through military intervention.¹⁸⁴ Those in accord with the intervention believed it was necessary.¹⁸⁵ They also believed it was within the enforcement mechanisms of international law.¹⁸⁶ Those against felt these interventions unrightfully interfered with the domestic jurisdiction of the countries "invaded."¹⁸⁷

Thus, military intervention is, arguably, an enforcement mechanism to promote a universal human rights standard. Yet, it is doubtful that the international arena would impose such harsh enforcement to China because of their preeminent world status. Therefore, the international community must ponder if any mechanisms exist to deter China from its current regime of human rights abuses.

2. China as Signatory to many International Covenants

China is a signatory to many international covenants.¹⁸⁸ They continue to sign international covenants on human rights such as the U.N. Pact on Rights and Rule of Law.¹⁸⁹ Most Asian nations, including China, signed the Universal Declaration of Human Rights. However, most signed it for pragmatic, practical purposes, not because of a deeply held commitment to the human rights norms within the Declaration.¹⁹⁰ The treaty, as a matter of international law, binds China.

183. INTERNATIONAL LAW, *supra* note 178, at 1167 (discussing the only lawful use of force by a state is that under the article 51 self-defense exception. There is a suggested exception, however, to Article 2(4) for benign purposes such as humanitarian intervention).

184. *Id.* at 1178-79.

185. *Id.*

186. *Id.* at 1169.

187. *Id.*

188. See generally *Universal Declaration of Human Rights*, *supra* note 26; ICCPR, *supra* note 29; CEDAW, *supra* note 30; CAT *supra* note 32; *Convention on the Rights of the Child*, *supra* note 33.

189. Erick Eckholm, *China Signs U.N. Pact on Rights and Rule of Law*, N.Y. TIMES, Nov. 21. 2000 at A4.

190. Bell, *supra* note 80, at 641.

3. International Court of Justice

Those believing in the international norm of human rights can perhaps look to the International Court of Justice as an agency to enforce the Declaration. Article 38 of the International Court of Justice (ICJ) details amongst others that:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
 - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states.
 - b. international custom, as evidence of a general practice accepted as law;
 - c. the general provisions of Article 59, judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.¹⁹¹

Decisions of the ICJ are binding between those party to the decision and in respect of the particular case at hand.¹⁹² If China did not comply, then under the provisions of the ICJ, the nation opposing China can bring it to the UN for enforcement.¹⁹³

Courts may derive international law from custom. The practice of states can develop into international law.¹⁹⁴ However, a principle of customary international law is not binding on a state that declares its dissent from the principle during its development.¹⁹⁵ China argues customary international law regarding human rights will not be applicable to them, as from the beginning they opposed the universal definition.¹⁹⁶ However, China's contentions are moot as China is a signatory to universal declarations.

The jurisdiction and enforcement problems regarding the human rights situation in China is a precarious one. Without the political will and consent of China, it is difficult to accomplish major change. Some argue a means to force the end of human rights abuses in China is through adversarial actions to communism and friendship to

191. I.C.J. CHARTER, Art. 38.

192. *Id.* at Art. 59.

193. U.N. CHARTER, Art. 94(1).

194. INTERNATIONAL LAW, *supra* note 178, at 135.

195. *Id.* at 138.

196. *See generally* Bell, *supra* note 80.

democracy; capitalism.¹⁹⁷

V. PART IV: IMPACT OF INTERNATIONAL TRADE AND CHINA'S ECONOMY ON THE WESTERN WORLD'S ENFORCEMENT OF HUMAN RIGHTS IN CHINA

A. *The Role of Multinational Corporations*

If the question were put now to everyone, everywhere-do you wish to become a citizen of the world?-it is safe to assume that most people in most places would answer, no, they wish to remain who they are.

William Greider¹⁹⁸

Multinational corporations (MNCs) are a proponent of capitalism. The role of MNCs in the area of human rights and development are highly opinionated and controversial.¹⁹⁹ Those that are pro-MNCs state that MNCs are the engines of development.²⁰⁰ This view holds that MNCs operating in the developing world directly promote economic and social rights, and indirectly support civil and political rights.²⁰¹ MNCs are able to do this through promotion of development by creating jobs and bringing in new capital and technology.²⁰² The United States largely agrees.²⁰³ The government has often proposed an open environment for direct foreign investment by MNCs as a tool of development to increase the living standards and promote democracy in the developing world.²⁰⁴

The changing nature of politics and the ever-increasing socio-economic influence of large corporations, however, often make MNCs more important than governments when it comes to the daily impact in the developing world.²⁰⁵ MNCs have a massive economic impact on developing nations. Many academicians, politicians and financiers believe that economic development through MNCs enhances human rights conditions.²⁰⁶

One example of this is the so-called "spillover effect" of MNCs

197. See *Consequences of MFN Renewal for China*, *supra* note 6, at 6, for a letter to Senate on behalf of many in the California business community.

198. WILLIAM GREIDER, *ONE WORLD, READY OR NOT* 333 (1998).

199. See generally Ayoub, *supra* note 165.

200. See generally William H. Meyer, *Human Rights and MNCs: Theory Versus Quantitative Analysis*, 18 HUM. RTS. Q. 368 (1996).

201. *Id.* at 376.

202. *Id.*

203. *Id.*

204. Meyer, *supra* note 200, at 378.

205. *Id.* at 368, 370.

206. *Id.* at 368.

development of China's coastal regions.²⁰⁷ MNCs began to invest and build along China's coast.²⁰⁸ The MNCs underpaid the labor, but the labor could not protest.²⁰⁹ As the enterprises became capital and technology intensive, living standards and pay rose. The spillover effect argues that this growth rate will move inland as foreign companies search for cheaper labor.²¹⁰

Moral claims and responsibilities are as legitimate concerning MNCs as they are in regards to individuals and governments. Those that are opposed to MNCs rapid expansion believe that MNCs lead to the deterioration of human rights in the civil, political and socio-economic spheres.²¹¹ As global interdependence is reaching an all-time high, as individual MNCs eclipse the income and power of many developing nations, and as the international system is evolving, MNCs move to the center stage in the international arena.²¹² Yet, there is no real moral or legal accountability for the actions of corporations.²¹³

The United States has repeatedly failed to recognize a legal duty to enforce their MNCs to respect the international labor rights of foreign workers exploited by subsidiaries.²¹⁴ The US is not a signatory to the International Covenant on Economic, Social and Cultural Rights,²¹⁵ CEDAW²¹⁶ and the Convention on the Rights of the Child.²¹⁷ International workers are also exempt from the Fair Labor Standards Act.²¹⁸ The United States has continued to profit at the expense of human rights violations that its nationals (MNCs) justify with profit maximization.²¹⁹ Consequently, the United States government has virtually exempted itself from accountability for labor rights violations of workers abroad.

The United States has a legal obligation under international law, specifically its duty under the International Covenant on Civil and Political Rights (ICCPR) and customary law, to regulate and punish American MNCs that engage in activities that violate foreign workers' labor rights.²²⁰ The United States should adopt legislation that prohibits and punishes MNCs for engaging in labor practices that

207. Bell, *supra* note 80, at 644.

208. *Id.*

209. *Id.*

210. *Id.*

211. Meyer, *supra* note 200, at 377.

212. *See id.* at 373.

213. *See generally* Ayoub, *supra* note 165.

214. *Id.*

215. ICCPR, *supra* note 29.

216. CEDAW, *supra* note 30.

217. *Convention on the Rights of the Child*, *supra* note 33.

218. *See generally* <http://www.elaws.dol.gov/flsa> (last visited Jan. 20, 2001).

219. *See* Ayoub, *supra* note 165 at 399.

220. *Id.*

violate international labor norms as recognized through the ICCPR and customary law.

The US must regulate its MNCs abroad and cooperate with China economically in order to aid the human rights situation there.²²¹ The US can achieve this cooperation in helping China gain entrance to the World Trade Organization and grant permanent Most Favored Nation status to them.

B. The Role of China's Most-Favored Nation Status with the United States and World Trade Organization Accession

Passing permanent normal trade relations will open China's market to us and will promote the cause of change in China

President Clinton, State of the Union Address, January 27, 2000.²²²

Most-Favored Nations (MFN) status is the standard of general tariff treatment the United States extends to other countries in return for reciprocal tariff treatment for US exports.²²³ The US has granted China MFN status in the past, on a yearly reviewable basis.²²⁴ It is presently a heated debate whether the US should continue to do so.²²⁵ It is in the US' best interest for security and commercial reasons to continue granting China MFN status.²²⁶ This will aid China in becoming a full-fledged member of the international economic and political community through the World Trade Organization (WTO).²²⁷

China's population represents more than one/fifth of the world's population and its economy is the third largest beyond the US and Japan.²²⁸ China is pursuing a rapid modernization program that sometime in the next century may make it the world's largest economy.²²⁹ China is the fourth largest trading partner of the US. In

221. See generally Meyer, *supra*, note 200 (proposing that economic development leads to improving human rights conditions in developing nations).

222. See us.govinfo.about.com/newissues/usgovinfo/library/ref/blsoufull.htm (last visited Jan. 14, 2001).

223. See generally *Consequences of MFN Renewal for China*, *supra* note 6.

224. See *WTO & Permanent Normal Trade Relations for China*, <http://www.infoserv2.ita.doc.gov/ticwebsite/apweb.nsf> (visited Mar. 8, 2001) [hereinafter *WTO & Permanent Normal Trade Relations for China*].

225. *Id.*

226. See *id.* (discussing that if China is to join the WTO, a yearly reviewable basis of China's MFN status would violate WTO rules as it would impose discriminatory procedural requirements on China that are not imposed on other WTO members).

227. *Consequences of MNF Renewal*, *supra* note 6, at 4 (statement of Senator Bider).

228. *Id.* at 4.

229. *Id.*

2000, China supplied the US with \$94 million in imports.²³⁰ It also purchased \$15.1 million worth of US exports.²³¹

Many believe that China restricts access to its markets with some of the world's highest tariffs, extorts knowledge and high skilled jobs as the price of doing business there, and dumps artificially low-priced products on American markets, hurting US competitors.²³² They say the \$78.9 million trade deficit with China is representative of this artificial dumping.²³³

Congress and the Senate, for years, have been troubled with US-China relations. Sven Kraemer, former Director of Arms Control for the National Security Council in a Senate hearing expressed the dismay of many.²³⁴ He stated:

The equal playing field of trade in China cannot be achieved unless you have very significant democratic reforms and unless the security situation is stable. You can make changes and can trade till you are blue in the face, but if the playing field is not equal politically and diplomatically, and honorable in the sense of treating your own people fairly and treating foreigners and other countries fairly, which means abiding by contracts and having checks and balances and a sense of honor, then no amount of trade makes any difference.²³⁵

In recent years, exposure to international norms and legal systems has played a role in the legal reform effort of China that is broadening citizens' rights.²³⁶ Reforms include: the 1997 amendments to the Criminal Procedure Law which limit police detention of suspected criminals; the 1989 Administrative Procedure Law which allows citizens to sue government officials; and the 1994 State Compensation Law which allows citizens who win such suits to collect damages.²³⁷

The most repressive periods in recent Chinese history occurred in times of international isolation.²³⁸ The Chinese people have an increased semblance of openness, personal liberties and social liberties due to exposure to the outside world. These include greater freedom of movement, greater choice of employment, schooling, housing

230. See *China's Country Commercial Guide*, <http://www.usaatrade.gov/website> (last visited Feb. 27, 2001) [hereinafter *China's Country Commercial Guide*].

231. *Id.*

232. *Consequences of MFN Renewal for China*, *supra*, note 6 at 3 (statement of Senator Feingold).

233. See Appendix A for the US-China trade deficit.

234. *Consequences of MFN Renewal for China*, *supra* note 6, at 87

235. *Id.* at 87-88.

236. See HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 132 (discussing improvements in human rights in China since 1992).

237. See <http://www.chinapntr.gov>, now available at www.mac.doc.gov/china.

238. See generally TSOU, *supra* note 117 (discussing the isolated Mao Zedong years and the devastating effects of the cultural revolution).

opportunities, and improved access to information.²³⁹

The accession of China to the World Trade Organization will help promote reform, accountability, and openness in China. Voting to enact permanent MFN status, alternatively called Permanent Normal Trade Relations (PNTR) with China is the most significant immediate action the US can take to move China in the right direction. The US and China have negotiated a proposed WTO agreement and permanent MFN status.²⁴⁰ The US can benefit from this opportunity and enhance its national interests from this accession.²⁴¹ It will also increase the chance that China will open further to global forces that will empower its people, increase access to information, expand their contact with the democratic world, and deepen their connections to outside influence and ideas.²⁴²

The accession agreement of China will deepen and help to lock in market reforms. It will encourage the CCP's leaders in power to move further and faster toward economic freedom. China can move into the twenty-first century with greater technological freedom. In opening China's telecommunications market, including access to Internet and satellite services, the agreement will help expose the Chinese people to information, ideas, and debate from around the world.²⁴³

The accession of China to the WTO will help strengthen the rule of law there and increase the likelihood that it will play by global rules.²⁴⁴ Many human rights activists and members of the foreign policy community agree that bringing China into the World Trade Organization will help move China in the right direction. Martin Lee, Chairman of the Democratic Party of Hong Kong is one of these people. In a letter to President Clinton on November 14, 1999, he wrote:

The participation of China in the WTO would not only have economic and political benefits, but would serve to bolster those in China who understand that the country must embrace the rule of law, which of course is a key principle underlying active membership in global trade organizations. . . For those of us who have long pressed for vigorous adherence to the rule of law in China, it is encouraging that so many Chinese officials support the nation's entry into groups such as the WTO.²⁴⁵

239. See HUMAN RIGHTS AND CHINESE VALUES, *supra* note 13, at 132

240. Robert Marquand, *With Concerns of Unrest, China Puts Brakes on WTO*, THE CHRISTIAN SCIENCE MONITOR, Mar. 16, 2001 at 7.

241. See *WTO & Permanent Normal Trading Relations for China*, *supra*, note 223 for the International Trade Administration of the Department of Commerce's position on Chinese WTO entrance.

242. <http://chinapntr.gov>, now available at www.mac.doc.gov/china.

243. *Id.*

244. See generally Alexandroff, *supra* note 5.

245. <http://www.chinapntr.gov>, now available at www.mac.doc.gov/china.

The international economic community cannot encourage the integration of China into the global economy with absolute ease. All parties involved must take steps to help facilitate this transition. It will not be an overnight process. China will not be in compliance within the next month, year and perhaps decade. It is an evolving process. For instance, on May 3, 2000, the US Commerce Department set up a China Compliance and Enforcement Initiative involving a five-point plan to ensure WTO compliance of China.²⁴⁶ With positive strides, greater economic freedoms will lead to greater personal freedoms within China.

VI. PART V: CONCLUSION AND RECOMMENDATIONS TO THE INTERNATIONAL LEGAL ARENA.

On a systemic level, there are overall flaws in policy that allow for the development versus human rights continuum to perpetuate. These flaws include the development theories that allow international trade law to ignore the rights of the individual.²⁴⁷ They also include the lack of a true enforcement mechanism on behalf of international human rights law.²⁴⁸ As legal scholar Steve Charnovitz argues, "International trade law needs to become more like international human rights law in establishing norms for what a State owes its own citizens. International human rights law needs to become more like international trade law in enforcing norms through mandatory dispute settlement and potential penalties for non-compliance."²⁴⁹

On a sub-systemic level, it is important to appreciate the different value systems between the West and China. Awareness of the cultural differences between the two allows for persuasive justifications for human rights practices.²⁵⁰ However, an effective channel of communication cannot merely be an empty discourse of hackneyed speeches about "Western" versus "Chinese" values. Egregious violations of human rights are not acceptable, regardless of a nation's history, culture, and rate of economic growth or slight improvements in human rights. They do not mitigate or excuse a government from scrutiny of its practices.

The CCP, since its inception, has defied the notion of human rights over the "collectivity". Neither cultural relativism, universalism, nor Confucianism will truly bring about a shift in this viewpoint. That shift

246. <http://www.chinapntr.gov>, now available at www.mac.doc.gov/china.

247. Steve Charnovitz, *The Universal Declaration of Human Rights at 50 and the Challenge of Global Markets: The Globalization of Economic Human Rights*, 25 BROOK. J. INT'L L. 113, 117 (1999).

248. *Id.* at 118.

249. *Id.*

250. Bell, *supra* note 80, at 647.

will not occur solely through external pressure, but from pressure within. The shift will occur through China's greatest asset, its people. It is for this very reason that the CCP has proceeded with a course of suppression. The Chinese economy will grow, its military may expand, but the greatest potential and threat resides in its population. The CCP's pro-active policies may have worked so far. It is the reactive responses of China's masses, however, that will ultimately disrupt the stability.

Therefore, a delicate maneuvering is required to maintain a balance between reform and stability. Despite the motives behind both Chinese and Western critics, it is those suffering the human rights violations that must be kept in mind. Certainly, those tortured, imprisoned and killed, and their families, should not accept culture as a valid excuse for these human rights violations; nor should China.

In assessing post-Mao China from the various human rights perspectives, the dilemmas arise between the requirements of modernization and the demands of communist doctrine and structure. The international community clearly risks damaging the credibility of international institutions established for the purpose of dealing with human rights abuses by allowing China to evade the scrutiny of the those institutions established.

As a member of the UN, bound by its Charter and a party to numerous human rights treaties, China voluntarily accepts the responsibility to be accountable to the international community on human rights. Now, it is up to these organizations to place some sort of enforcement mechanisms within themselves to monitor and address the situation in China.

China, also needs to not evade international scrutiny. China is becoming a major player in the international economic arena.²⁵¹ Countries like the United States recognize the importance of China as a trading partner.²⁵² These countries are willing to keep trade talks open with China despite their human rights record.²⁵³ China needs to appreciate the dilemmas countries go through when deciding to continue trading with them. China must not take for granted the help the outside world gives. While China does not have to accept this outside world, nor Western values, China cannot internalize and isolate from the expanding world market. China needs to show some flexibility, to its people and to the international community and show that is, after decades of closed-mindedness, open for business.

251. See generally *WTO & Permanent Normal Trade Relations for China* *supra* note 224.

252. *Id.*

253. The US negotiation of MFN status is an example of this.

This includes recognition of individual human rights and the protection thereof.

APPENDIX A

UNITED STATES' TRADE DEFICIT WITH THE PEOPLE'S
REPUBLIC OF CHINA (PRC) 1998-2000

TRADE DATA (\$BILLIONS)



